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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/757,362	01/08/2001	Howard C. Chasteen	1604-373	6627
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SHERIDAN ROSS PC 1560 BROADWAY SUITE 1200 DENVER, CO 80202			EXAMINER HYLTON, ROBIN ANNETTE	
			ART UNIT 3727	PAPER NUMBER

DATE MAILED: 05/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/757,362

Applicant(s)

CHASTEEN ET AL.

Examiner

Robin A. Hylton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Specification*

1. The amendment filed July 31, 2003 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: "the pull ring is elevated at least 0.030 inches from the central panel 4 upper surface". Originally filed claim 10 sets forth a lip of the pull ring being elevated above the central panel upper surface.

Applicant is required to cancel the new matter in the reply to this Office Action.

### *Claim Rejections - 35 USC § 112*

2. Claim 10 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The disclosure as originally filed does not set forth the pull ring as being elevated, but rather a lip of the pull ring is elevated from the upper surface of the central panel. This is a **new matter** rejection.

3. Claims 1,3-13 and 20-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the claims are rejected for the following reasons:

The dimension of 0.4375 inches falls outside of the expressed range of the small opening at page 7, lines 14-18. This dimension, according to the specification, would not provide a substantially spill proof can lid.

It is unclear how a dimension of 0.4375 inches provides a substantially spill proof container end when the specification states that a diameter greater than about 0.3125 would not allow the lid to be spill proof.

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Claim 1 recites the limitation "said small opening beverage can" twice in the last three lines thereof. There is insufficient antecedent basis for this limitation in the claim since the preamble sets forth a "can end closure".

Dependent claims not specifically mentioned are rejected as depending from rejected base claims since they inherently contain the same deficiencies therein.

***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1,4,6-12,14,15,18,20,21, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tashiro et al. (JP 2000-226029) in view of and Hosoi et al. (JP 2002-53159).

Tashiro teaches a can end having a small opening for receiving a straw, the small opening having a maximum length of 10mm and allowing venting of the can while the straw is therein. Tashiro does not teach the small opening is substantially circular nor specific dimensions of the other can end portions.

Hosoi teaches it is known to provide a can end with a substantially circular opening for receiving a straw therein, said straw frictionally engaged by the opening, and a small vent opening adjacent the circular opening and defined by the score line (see the embodiment of figure 3).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the small opening of Tashiro of a circular configuration, since such a modification would have involved a mere change in the shape of a component. Doing so provides a shape which is easier to manufacture.

Additionally, it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a vent opening adjacent the circular opening of Tashiro. Doing so provides for venting of an associated beverage can to aid in removal of liquid contents from the beverage can.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the small opening with a diameter no greater than about 0.4375 inches, the venting

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opening of at least 0.0004 (square) inches, to elevate the pull ring at least about 0.030 inches from the upper surface, and a score line surface area no greater and about 0.1503 (square) inches, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

6. Claims 3,5, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Hanson (US 4,184,605)

Tashiro as modified teaches the claimed can end except for a bead inhibiting detachment of a tab from the can end.

Hanson teaches it is known to provide a bead proximate the hinge and/or termination point of the score line to inhibit detachment of a tab from the can end.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of provide a bead proximate the hinge and/or termination point of the score line. Doing so inhibits detachment of a tab from the can end upon opening.

7. Claims 13 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 1 and 14 above, and further in view of Forbes (US 4,923,083).

Tashiro as modified teaches the claimed can end except for a reinforcing bead providing a shroud the leading edge of the circular opening.

Forbes teaches it is known to provide a reinforcing bead providing a shroud for the leading edge of a circular opening of a scored can end.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a shroud to the modified can end of Tashiro. Doing so prevents accidental cuts caused by an exposed open score line.

8. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 20, and further in view of Peterson et al. (US 3,438,578).

Tashiro as modified teaches the claimed can end except for the straw having a corrugated portion.

Peterson teaches it is known to use a corrugated straw for drinking a beverage.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a corrugated straw, since it is an obvious substitution of known equivalents which allow for beverage to be removed from a container without touching the can end. Doing so allows one to drink from an associated beverage can while lying down.

9. Claims 17 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 14 and 20 above, and further in view of Brown (US 3,757,989).

***Response to Arguments***

10. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

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13. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-7306 on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_


14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Technology Center 3700 Customer Service Office at (703) 306-5648.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH  
May 15, 2004

  
Robin A. Hylton  
Primary Examiner  
GAU 3727